

Section 4(f) – 49 USC303 and 23 USC 138

FHWA projects are prohibited from using land from a publicly owned park, recreation area, wildlife and waterfowl refuge or any significant historic site (publicly or privately owned) unless there is no feasible and prudent alternative to the use of land. The proposed action must also include planning to minimize harm to the property that would result from such use.

Accurate and detailed information is needed to support the determination of no feasible and prudent alternatives. Supporting documentation must demonstrate that there are unique problems or unusual factors present in alternate routes and that the cost, environmental impacts, or community disruption resulting from such alternative routes reaches extraordinary magnitudes.

Section 4(f) consideration is not required when the official having jurisdiction over a park, recreation area, or refuge determines that the land is not significant. The FHWA Division Administrator will review the official's non-significance determination to assure its reasonableness. In the absence of such a determination, the Section 4(f) land will be considered significant. The use of land from a publicly owned school playgrounds may require Section 4(f) documentation. If the playground is open to the public and serves either organized or recreational purposes (walk-in activity), it may be subject to section 4(f) if the playground is determined to be significant for recreational purposes. This documentation should be obtained from the official(s) having jurisdiction over the facility. Section 4(f) is not applicable to publicly owned fairgrounds that function primarily for commercial purposes (e.g., stock car races, annual fairs, etc.) rather than recreational. When fairgrounds are open to the public and function primarily for public recreation other than the annual fair, Section 4(f) only applies to those portions of the land determined significant for recreational purposes.

The provisions of Section 4(f) apply to publicly owned lands that are administered for multiple uses only if the portion of land to be taken is in fact, designated in the plan of the administering agency as being used for park, recreation, wildlife, waterfowl or historic purposes, or there is a definite formulated plan for such use, as determined by the official having jurisdiction over such lands. The FHWA will review the determination to assure its reasonableness. The significance determination will be applied only to the lands actually being used for Section 4(f) purposes.

Section 4(f) applies to all archaeological sites on or eligible for inclusion on the National Register, including those discovered during construction, unless the FHWA, after consultation with the SHPO and the ACHP, determines that the archaeological resource is important chiefly for the information it contains and has minimal value for preservation in place. Such archaeological resources which do not warrant preservation in place may be recovered in accordance with a resource recovery plan developed in compliance with 36 CFR Part 800 (Section 106 Procedures).

The National Register of Historic Places lists historic properties of national, state, and local significance. Therefore, a historic site is significant only if it is included on or is eligible for inclusion on the National Register of Historic Places, unless the FHWA determines that the application of Section 4(f) is otherwise appropriate. Consultation with the SHPO and local officials will aid in determining the application of Section 4(f) to historic sites.

If a project encounters a historic district on or eligible for the National Register of Historic Places, Section 4(f) may be applicable depending upon the determination of effect by the SHPO. If the occupancy of the property adversely affects the integrity of the district, then Section 4(f) would apply. If a project does not occupy land in a historic site or district, but does cause an "adverse affect", there may be a constructive use of the property, and thus a Section 4(f) may be required. Should this situation arise, contact the INDOT for further clarification.

If there is a use of land from a historic site that results in the SHPO's determination of "no adverse effect", Section 4(f) documentation is required. See the section on programmatic 4(f) to determine if it is applicable for this type of project.

An "adverse affect" under 36 CFR 800 does not automatically mean that Section 4(f) applies. If the impact would not substantially impair the historic integrity of a historic site or district, Section 4(f) requirements do not apply.

Section 4(f) does not apply to the construction of a replacement bridge when a historic bridge is left in place and its historical integrity is not substantially impaired (i.e., "no effect" or "no adverse effect"). Section 4(f) does apply if the historic bridge is demolished or if its historical integrity is "adversely affected." See the section on programmatic 4(f) for bridges to determine if it is applicable for this type of project.